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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

In re Z.T., a Person Coming
Under the Juvenile Court Law.

2d Juv. No. B289523
(Super. Ct. No. FJ55401)
(Los Angeles County)

THE PEOPLE,

Plaintiff and Respondent,

v.

Z.T.,

Defendant and Appellant.

The Los Angeles County District Attorney filed a petition under Welfare and Institutions Code section 602 alleging that appellant Z.T. committed misdemeanor battery (Pen. Code, § 242). After a contested jurisdictional hearing, the juvenile court found the petition true. It declared appellant a ward of the court, placed him home on probation, and orally pronounced the terms and conditions of probation. The unsigned minute order of the

proceedings contains five probation conditions that were not stated by the court.

Appellant contends the minute order must be amended to reflect the juvenile court's oral pronouncement of the probation terms and conditions. We cannot determine from the record, however, whether the juvenile court intended to impose the additional probation conditions or whether they were the result of clerical error. We remand for correction and clarification. Otherwise, we affirm.

DISCUSSION¹

At the April 2, 2018 dispositional hearing, the juvenile court stated the terms and conditions of appellant's probation. It directed appellant to "[o]bey all laws, all instructions of your parents"; to "[a]ttend school program"; to "maintain good grades, attendance, and citizenship"; to "not have any contact with the victim in this case or cause him to be [in] any contact with the victim"; to "[s]ubmit your person and property to search and seizure with or without a warrant"; and to "[p]ay for any actual losses that's occurred." (See Cal. Rules of Court, rule 5.790(b).) The court did not "hear of any" actual losses, but the prosecutor stated there was an issue regarding restitution. The court responded, "We will find out. And I'll order minor to do 30 hours community service." The minutes of the proceedings differed in several respects.

The Los Angeles County Superior Court utilizes a form minute order (Form 76M423A (Rev. 1-07)/JMOM 08.01.16) to document the conditions of probation imposed by the juvenile court. The form contains 56 preprinted probation conditions with a box next to each condition, plus space to type in four additional

¹ The facts surrounding appellant's offense are irrelevant to this appeal.

conditions. The bottom of the form has a place for the minor to acknowledge that he or she has read and understands the above conditions of probation. It also has a signature line for the juvenile court judge or commissioner/referee.

Here, the juvenile court used the form minute order to document the probation terms and conditions orally imposed at the dispositional hearing. The boxes next to 11 of the preprinted conditions are checked. Five of them were not stated by the court: “1A You must obey all previous terms and conditions of probation given by any Judge, Commissioner or Referee, unless I have changed the conditions today”; “2 You must obey the rules of your Parents, Caregivers, Teachers, School Officials and Children’s Services Workers”; “3 You must obey the rules of your Probation Officer [and] [y]ou must meet your Probation Officer when told”; “4 You must tell your Probation Officer before changing your phone number, where you live, where you attend school or work”; and “12 You must follow the curfew set by your Probation Officer and your parent or caregiver[,] [y]ou must not be out of your home without your parent, or caregivers consent[, and] [b]etween the hours of 6 pm and 6 am you must be at home unless your parent or caregiver is present with you.” Neither appellant nor the juvenile court commissioner signed the minute order.

Appellant argues that probation conditions 1A, 3, 4 and 12 must be stricken, and that condition 2 must be amended because they conflict with the juvenile court’s oral pronouncement of judgment. (See *People v. Mesa* (1975) 14 Cal.3d 466, 471-472 (*Mesa*).) The People concede the minute order “do[es] not accurately reflect the juvenile court’s oral pronouncement of judgment,” and that appellant “should not have to piece together the full terms of his probation by reviewing the various potential

sources of those conditions’ or be expected to resolve any conflicts.” (See *In re D.H.* (2016) 4 Cal.App.5th 722, 726.) They contend the matter “should be remanded to the juvenile court to resolve the discrepancies and impose the applicable terms and conditions of probation.” We agree with the People.

When the reporter’s transcript and the clerk’s transcript are in conflict, “[they] will be harmonized if possible; but where this is not possible that part of the record will prevail, which, because of its origin and nature or otherwise, is entitled to greater credence.” (*People v. Smith* (1983) 33 Cal.3d 596, 599; see *In re D.H.*, *supra*, 4 Cal.App.5th at p. 725.) Generally, when a discrepancy exists between the minute order and the court’s oral pronouncement, the oral pronouncement controls. (*People v. Morales* (2014) 224 Cal.App.4th 1587, 1594.) This is because the clerk’s minutes must accurately reflect what occurred at the hearing. (*Ibid.*; see *Mesa*, *supra*, 14 Cal.3d at p. 471 [Since entering a court’s ruling in the minutes is a clerical function, “a discrepancy between the judgment as orally pronounced and as entered in the minutes is presumably the result of clerical error”]; *People v. Zackery* (2007) 147 Cal.App.4th 380, 387 [“The clerk cannot supplement the judgment the court actually pronounced by adding a provision to the minute order”].)

Nonetheless, “a grant of probation is not part of the judgment that creates vested rights; the court has the authority to revoke, modify or change its order.” (*People v. Thrash* (1978) 80 Cal.App.3d 898, 900-901 (*Thrash*).) In *Thrash*, the Court of Appeal affirmed an order revoking the defendant’s probation based on the violation of a probation condition that was not imposed during the trial court’s original pronouncement of judgment. (*Id.* at pp. 900-902.) The court determined it was sufficient that the condition was included in an amended

probation order that was signed by the trial judge and provided to the defendant. (*Ibid.*)

Similarly, in *In re Frankie J.* (1988) 198 Cal.App.3d 1149, the juvenile court revoked probation based on the violation of a probation condition that had not been orally imposed. (*Id.* at pp. 1152-1155.) Upon his release from custody, the minor signed a form containing the specific terms and conditions of his probation, which included a condition prohibiting the possession of dangerous weapons. (*Id.* at p. 1152.) The Court of Appeal rejected the minor's assertion that the weapons condition was invalid because it was not orally imposed in open court. It noted that "[t]his contention was specifically addressed and rejected in [*Thrash*]." (*Id.* at p. 1155.)

Both *Thrash* and *In re Frankie J.* are distinguishable because the minute order at issue here was not signed by either appellant or the juvenile court commissioner. There is no evidence the commissioner intended to modify or augment the probation conditions that were orally imposed. A reasonable interpretation of the record is that the inclusion of the five additional probation conditions in the minute order was a clerical error. Still, the juvenile court retained authority to modify the probation conditions, the challenged conditions were included in the minute order, and appellant received notice of the conditions, as evidenced by this appeal. Under these circumstances, we cannot say the juvenile court did not intend to exercise its authority to modify the probation terms and conditions. We therefore remand the matter to the juvenile court to clarify its intent. Appellant shall either be present during such clarification proceedings or acknowledge in writing that he has been apprised of the clarified terms and conditions.

Probation is designed to help the minor by setting specific rules to follow. “The court may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced.” (Welf. & Inst. Code, § 730, subd. (b).) But imposition of such conditions is not and must not be a guessing game. It is incumbent on the juvenile court to clearly state the terms and conditions and to apprise the minor of them. A minor cannot violate a probation term or condition of which he or she was not apprised.

DISPOSITION

The matter is remanded to the juvenile court to clarify whether each of the five challenged probation conditions (Nos. 1A, 2, 3, 4 and 12) was intentionally included in the minute order dated April 2, 2018 or was the result of clerical error. In all other respects, the dispositional order is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

YEGAN, Acting P. J.

TANGEMAN, J.

Robert Leventer, Commissioner
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